

(2015) 04 SHI CK 0040
In the High Court Of Himachal Pradesh
Case No : Cr.M.P.(M) No. 226 of 2015

Harvinder Singh

APPELLANT

Vs

State of H.P.

RESPONDENT

Date of Decision : 09-04-2015

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 154, 437, 437(1), 438, 439(1)
Penal Code, 1860 (IPC) — Section 149, 307, 323, 328, 34

Citation : (2015) 04 SHI CK 0040

Hon'ble Judges : Tarlok Singh Chauhan, J.

Bench : Single Bench

Advocate : Lovneesh Kanwar, for the Appellant; V.K. Verma, Meenakshi Sharma, Rupinder Singh, Additional Advocate Generals, Parul Negi, Deputy Advocate General, Advocates for the Respondent

Final Decision : Allowed

Judgement

Tarlok Singh Chauhan, J.—The petitioner has approached this Court for grant of regular bail in case FIR No. 18 of 2015 registered at Police Station Gohar on 8.2.2015 under Sections 364, 307, 328 and 323 I.P.C.

Respondent has filed the status report and have also produced the records of investigation.

2. The allegations which led to the filing of the FIR against the petitioner are that on 8.2.2015, SI/SHO alongwith ASI Ashok Kumar, HC Deep Chand No. 910, HHC Narnender Kumar No. 126, Constable Dinesh Kumar No. 500 and LC Geet Devi No. 607 were on patrolling near Chailchowk. At about 5.00 P.M. on the intimation of Kapoor Chand after associating Up-Pradhan of Gram Panchayat Shala, Tarapati and Kundal Lal in the raiding party I.O. reached at Mandunala where Kapoor Chand son of Sh. Udam Singh R/o Village Bhiyura got his statement recorded under Section 154 Cr.P.C. wherein he has disclosed that he is resident of Bhiyura and is agriculturist by profession and he is also having his house at Chailchowk. He used to visit his house at Chailchowk also. The petitioner Harvinder son of

Sh.Sewa Singh resident of Mangwain who had solemnized marriage in village Barjohadu with Smt.Hansa Thakur is known to him. The petitioner met him about 20-22 days ago at Chailchowk and told him that he was fed-up with his wife Hansa Devi and wants to solemnize second marriage, so he wants to eliminate Hansa Devi. The petitioner asked him about a person to eliminate Hansa Devi. The petitioner asked him about a person who can do away Hansa Devi with her life and will give the money for this. Upon which the complainant Kapoor Chand refused to do this act but Harvinder/petitioner insisted the complainant to do away Hansa Devi with her life and promised to pay money to him for the same. Complainant thought that the petitioner will do away Hansa Devi with her life though someone else so he told the petitioner Harvinder to wait for some time, but petitioner kept on calling the complainant and on 8.2.2015 petitioner told the complainant that if he will not do his work today then he will get murdered Hansa Devi from someone else by taking her to some other place. Upon which complainant consented to save the life of Hansa Devi and disclosed the fact to the SHO Gohar at Chailchowk. When the I.O./SHO alongwith above said raiding party was coming towards Mandunala in private vehicles complainant also received phone calls of Harvinder. At about 7.30 p.m. Harvinder Singh came at Mandunala in his vehicle No. HP 33B-9045 Swift Car from the side of Baddu and on seeking the vehicle of complainant stopped his vehicle and after alighting from the vehicle told the complainant that Hansa Devi was alone in the vehicle and after killing her put the dead body in his vehicle and he will make the payment at that very moment after withdrawing the amount from ATM. Had the complainant not disclosed this fact to the police, the petitioner would have killed Hansa Devi himself or thorough someone else. By intimating the police the complainant saved the life of Hansa Devi. The complainant also produced the recording of Harvinder done by him in which Harvinder has been talking about killing of Hansa Devi. During investigation it was also found that the petitioner was also giving slow poison through medicines to Hansa Devi due to which Hansa Devi would die. Upon this statement of the complainant case was registered against the accused/petitioner.

3. When the case came up for consideration before this Court on 12.3.2015, it was represented by the investigating officer that the report of the chemical examiner was awaited and accordingly the case was adjourned to 26.3.2015, when again the report was not available and the matter was adjourned for today. Today when the matter was taken up, the investigating officer placed before me the report of the chemical examiner, which clearly suggests that in this report no traces of poison were found in the blood samples sent for analysis. Thus, at this stage, the prosecution version cannot be readily accepted and has to be taken with the pinch of salt.

4. The learned Additional Advocate General has opposed the bail application by alleging that the petitioner is an accused in a serious offence and bail ought not to be granted in such circumstances.

5. What probably has been over-looked by Mr. Verma is the fact that the object of bail is only to secure the appearance of the accused person at the time of trial by granting reasonable amount of bail. Therefore, the object of bail is neither punitive nor preventative. At this stage deprivation of liberty will have to be considered a punishment, unless of course, the presence of the accused person cannot be secured. The Courts owe more than verbal respect to the principle that punishment begins after conviction, and that every man is deemed to be innocent until duly tried and duly found guilty. Even otherwise, the law with regard to bail is now well settled. As early as in the year 1978, the Hon'ble Supreme Court in *Gurcharan Singh and Others Vs. State (Delhi Administration)*, laid the following criteria for grant of bail:

"22. In other non-bailable cases the Court will exercise its judicial discretion in favour of granting bail subject to sub-section (3) of Section 437 Cr.P.C. if it deems necessary to act under it. Unless exceptional circumstances are brought to the notice of the Court which may defeat proper investigation and a fair trial, the Court will not decline to grant bail to a person who is not accused of an offence punishable with death or imprisonment for life. It is also clear that when an accused is brought before the Court of a Magistrate with the allegation against him of an offence punishable with death or imprisonment for life, he has ordinarily no option in the matter but to refuse bail subject, however, to the first proviso to Section 437(1) CrPC and in a case where the Magistrate entertains a reasonable belief on the materials that the accused has not been guilty of such an offence. This will, however, be an extraordinary occasion since there will be some materials at the stage of initial arrest, for the accusation or for strong suspicion of commission by the person of such an offence.*****

24. Section 439(1) Cr.P.C. of the new Code, on the other hand, confers special powers on the High Court or the Court of Session in respect of bail. Unlike under Section 437(1) there is no ban imposed under Section 439(1), Cr.P.C. against granting of bail by the High Court or the Court of Session to persons accused of an offence punishable with death or imprisonment for life. It is, however, legitimate to suppose that the High Court or the Court of Session will be approached by an accused only after he has failed before the Magistrate and after the investigation has progressed throwing light on the evidence and circumstances implicating the accused. Even so, the High Court or the Court of Session will have to exercise its judicial discretion in considering the question of granting of bail under Section 439(1) Cr.P.C. of the new Code. The overriding considerations in granting bail to which we adverted to earlier and which are common both in the case of Section 437(1) and Section 439(1) Cr.P.C. of the new Code are the nature and gravity of the circumstances in which the offence is committed; the position and the status of the accused with reference to the victim and the witnesses; the likelihood, of the accused fleeing from justice; of repeating the offence; of jeopardising his own life being faced with a grim prospect of possible conviction in the case; of tampering with witnesses; the history of the case as well as of its investigation and other relevant grounds

which, in view of so many valuable factors, cannot be exhaustively set out."

6. The Hon"ble Apex Court in *Prasanta Kumar Sarkar Vs. Ashis Chatterjee and Another*, , has laid down the following principles to be kept in mind, while deciding petition for bail:

- (i) whether there is any prima facie or reasonable ground to believe that the accused had committed the offence;
- (ii) nature and gravity of the accusation;
- (iii) severity of the punishment in the event of conviction;
- (iv) danger of the accused absconding or fleeing, if released on bail;
- (v) character, behavior, means, position and standing of the accused;
- (vi) likelihood of the offence being repeated;
- (vii) reasonable apprehension of the witnesses being influenced; and
- (viii) danger, of course, of justice being thwarted by grant of bail.

7. Thereafter, in a detailed judgment, the Hon"ble Supreme Court in *Siddharam Satlingappa Mhetre Vs. State of Maharashtra and Others*, , while relying upon its decision rendered by its Constitution Bench in *Shri Gurbaksh Singh Sibbia and Others Vs. State of Punjab*, , laid down the following parameters for grant of bail:-

"111 No inflexible guidelines or straitjacket formula can be provided for grant or refusal of anticipatory bail. We are clearly of the view that no attempt should be made to provide rigid and inflexible guidelines in this respect because all circumstances and situations of future cannot be clearly visualized for the grant or refusal of anticipatory bail. In consonance with the legislative intention the grant or refusal of anticipatory bail should necessarily depend on facts and circumstances of each case. As aptly observed in the Constitution Bench decision in *Sibbia's* case (supra) that the High Court or the Court of Sessions to exercise their jurisdiction under section 438 Cr.P.C. by a wise and careful use of their discretion which by their long training and experience they are ideally suited to do. In any event, this is the legislative mandate which we are bound to respect and honour.

112. The following factors and parameters can be taken into consideration while dealing with the anticipatory bail:

- (i) The nature and gravity of the accusation and the exact role of the accused must be properly comprehended before arrest is made;
- (ii) The antecedents of the applicant including the fact as to whether the accused has previously undergone imprisonment on conviction by a Court in respect of any cognizable offence;

- (iii) The possibility of the applicant to flee from justice;
- (iv) The possibility of the accused's likelihood to repeat similar or the other offences.
- (v) Where the accusations have been made only with the object of injuring or humiliating the applicant by arresting him or her.
- (vi) Impact of grant of anticipatory bail particularly in cases of large magnitude affecting a very large number of people.
- (vii) The courts must evaluate the entire available material against the accused very carefully. The court must also clearly comprehend the exact role of the accused in the case. The cases in which accused is implicated with the help of sections 34 and 149 of the Indian Penal Code, the court should consider with even greater care and caution because over implication in the cases is a matter of common knowledge and concern;
- (viii) While considering the prayer for grant of anticipatory bail, a balance has to be struck between two factors namely, no prejudice should be caused to the free, fair and full investigation and there should be prevention of harassment, humiliation and unjustified detention of the accused;
- (ix) The court to consider reasonable apprehension of tampering of the witness or apprehension of threat to the complainant;
- (x) Frivolity in prosecution should always be considered and it is only the element of genuineness that shall have to be considered in the matter of grant of bail and in the event of there being some doubt as to the genuineness of the prosecution, in the normal course of events, the accused is entitled to an order of bail.

113. Arrest should be the last option and it should be restricted to those exceptional cases where arresting the accused is imperative in the facts and circumstances of that case. The court must carefully examine the entire available record and particularly the allegations which have been directly attributed to the accused and these allegations are corroborated by other material and circumstances on record.

114. These are some of the factors which should be taken into consideration while deciding the anticipatory bail applications. These factors are by no means exhaustive but they are only illustrative in nature because it is difficult to clearly visualize all situations and circumstances in which a person may pray for anticipatory bail. If a wise discretion is exercised by the Judge concerned, after consideration of entire material on record then most of the grievances in favour of grant of or refusal of bail will be taken care of. The legislature in its wisdom has entrusted the power to exercise this jurisdiction only to the judges of the superior courts. In consonance with the legislative intention we should accept the fact that the discretion would be properly exercised. In any event, the option of

approaching the superior court against the court of Sessions or the High Court is always available."

(Emphasis supplied)

8. In *Sanjay Chandra Vs. CBI*, , the Hon"ble Supreme Court made the following pertinent observations in paras 21, 22, 23, and 40 as under:-

"21. In bail applications, generally, it has been laid down from the earliest times that the object of bail is to secure the appearance of the accused person at his trial by reasonable amount of bail. The object of bail is neither punitive nor preventative. Deprivation of liberty must be considered a punishment, unless it is required to ensure that an accused person will stand his trial when called upon. The courts owe more than verbal respect to the principle that punishment begins after conviction, and that every man is deemed to be innocent until duly tried and duly found guilty.

22. From the earliest times, it was appreciated that detention in custody pending completion of trial could be a cause of great hardship. From time to time, necessity demands that some un-convicted persons should be held in custody pending trial to secure their attendance at the trial but in such cases, `necessity' is the operative test. In this country, it would be quite contrary to the concept of personal liberty enshrined in the Constitution that any person should be punished in respect of any matter, upon which, he has not been convicted or that in any circumstances, he should be deprived of his liberty upon only the belief that he will tamper with the witnesses if left at liberty, save in the most extraordinary circumstances.

23. Apart from the question of prevention being the object of a refusal of bail, one must not lose sight of the fact that any imprisonment before conviction has a substantial punitive content and it would be improper for any Court to refuse bail as a mark of disapproval of former conduct whether the accused has been convicted for it or not or to refuse bail to an un-convicted person for the purpose of giving him a taste of imprisonment as a lesson.

40. The grant or refusal to grant bail lies within the discretion of the Court. The grant or denial is regulated, to a large extent, by the facts and circumstances of each particular case. But at the same time, right to bail is not to be denied merely because of the sentiments of the community against the accused. The primary purposes of bail in a criminal case are to relieve the accused of imprisonment, to relieve the State of the burden of keeping him, pending the trial, and at the same time, to keep the accused constructively in the custody of the Court, whether before or after conviction, to assure that he will submit to the jurisdiction of the Court and be in attendance thereon whenever his presence is required."

9. Now in case the facts of the present case are seen, no doubt it is an unfortunate case, where a young lady has lost her life, but only on account of

this fact, the petitioner cannot be detained and deprived of his liberty, even otherwise guilt of the accused can only be established in a full-fledged trial and at present taking into consideration the entire facts and circumstances, I feel it would be a travesty of justice to deny bail to the petitioner. It is not that this Court is oblivious to the fact that the acquisitions against the petitioner are grave and serious in nature, but then a balance has to be struck between the rights of the petitioner and the rights of the police to carry out free and fair investigation.

10. On the basis of records, it cannot be said that the petitioner would hamper free, fair and full investigation. The most important object for refusal or granting bail is to secure the presence of the accused. In this case the petitioner is a permanent resident of District Mandi and I see no reason why the petitioner would flee from justice or trial. Stringent conditions for securing the presence of the petitioner can always be imposed.

11. Accordingly the preset petition is allowed and the petitioner is ordered to be released on bail in FIR No. 18 of 2015, registered under Sections 364, 307, 328 and 323 I.P.C. at Police Station, Gohar on 8.2.2015, on his furnishing personal bond in the sum of Rs. 50,000/- with one surety of the like amount to the satisfaction of Judicial Magistrate Ist Class, Gohar, H.P. with the following conditions:-

(i) That the petitioner shall not, directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him from disclosing such facts to the Court or to any police officer;

(ii) that the petitioner shall not tamper with the prosecution evidence or threaten the witnesses;

(iii) that the petitioner shall make himself available for interrogation by the police officer as and when required;

(iv) that the petitioner shall not misuse his liberty in any manner.

It is made clear that the observations made in this order are solely for the purpose of deciding the present bail application and shall not be read or referred to at the time of trial or at any later stage.